

Dutch courts competent to try Yugoslav war crimes

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World Cup finals in France.¹³

Jack Straw, the home secretary, has promised to try to grant new powers to the EU and develop measures to combat illegal immigration, terrorism, drug trafficking, and organized crime throughout Europe. He has indicated that a problem is with some former Soviet bloc countries wanting to join the EU.

According to Straw, the length of time it takes for criminals arrested in one EU country to be extradited and tried in another is unduly lengthy. It is akin to having 19th century procedures to pursue 21st century criminals.

The British presidency, which will run for six months starting January 1, 1998, permits the government to chair all meetings of EU ministers. Clearly the government holding the EU presidency has considerable power to set the European agenda.

Perhaps the most important aspect that may arise from the British presidency over the EU is progress on Europol. Until now, the British Government has been one of the strongest opponents of yielding authority to Europol and agreeing to give the European Court of Justice authority to adjudicate disputes arising from Europol's investigatory powers (e.g., over privacy matters). Often the assumption of the presidency makes a country confront its opposition to important policy positions within the EU. The British Government's announcement also indicates the increasing interaction between international criminal law and international sports laws.

XI. LAW OF WAR

A. Dutch Courts Competent to Try Yugoslav War Crimes

by André Klip¹⁴

The Supreme Court of the Netherlands ruled in a decision of November 11th, 1997, that Dutch Courts (military chamber) are competent to try violations of international humanitarian law, wherever committed and regardless of whether the Netherlands is a party to the conflict. The Supreme Court came to this far reaching conclusion in the case of *Knezevic*, born in Banja Luka and prosecuted before the District Court of Arnhem on accusations of having committed two killings, deportation of civilians to a concentration camp, and sexual assault on two women in the region of Prijedor, Bosnia Herzegovina, in June 1992.

The prosecution based its case on the 1952 Act on Criminal Law in Time of War (Wet Oorlogsstrafrecht). This act, drafted shortly after the second world war, contained quite a number of ambiguities in respect to the question of whether Dutch criminal law applies outside the territory of the Netherlands in cases in which the Kingdom of the Netherlands is not a party to the conflict. The Supreme Court resolved this question on the basis of interpretation of the 1949 Geneva Conventions and the obligations for the Netherlands under these treaties. Although the decision was taken in a case concerning war crimes in Yugoslavia, its consequences go beyond that region. Also, violations of international humanitarian law, committed elsewhere, may be prosecuted in the

¹³ Simon Buckby, *EU Role to Help Combat Crime*, FIN. TIMES, Dec. 29, 1997, at 4, col. 1.

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Netherlands. Expectations are that more prosecutions may take place.¹¹

The Ministry of Justice responded to the decision of the Supreme Court in a letter dated November 28, 1997, to parliament concerning its policy on the application of Article 1 sub F of the 1951 Convention on the Status of Refugees. In principle, those who are being persecuted have the right to obtain a refugee status in one of the parties to the Convention. An exception to this general rule is based on the presumption that the applicant has committed war crimes or other serious crimes. In such a case the authorities must deny the person concerned access to the country. Article 1 sub F: "This Convention shall not apply to any person with respect to whom there are serious reasons for considering that: (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes. (...)." Many people from the former Yugoslavia and from Afghanistan have taken refuge in the Netherlands. Among them are also people who are recognized by other refugees as their torturers and as violators of international humanitarian law.

The Immigration Office will open a specialized branch for cases in which Article 1 Sub F of the Refugee Convention might be applicable. The crimes for which this provision will be applied are related to violation of the 1949 Geneva Conventions and its 1977 Protocols, the 1948 Genocide Convention and the 1984 Torture Convention. They will collect information on the applicant that may lead to a denial of his or her application for asylum. Subsequently, the Immigration Office will hand over the information to the competent Public Prosecutor for prosecution of the person in the Netherlands.

B. Texas Magistrate Denies Surrender to Rwanda War Crimes Tribunal

On December 17, 1997, a Texas magistrate denied a surrender request by the Rwanda War Crimes Tribunal for the only person arrested on behalf of the Tribunal, thereby posing a major temporary setback for the requirement that United Nations members must cooperate with the Tribunal in surrendering suspects.¹²

According to the indictment against Elizaphan Ntakirutimana, the defendant, an ethnic Hutu, on April 6, 1994, when attacks on Tutsi started in Rwanda, Mr. Ntakirutimana is alleged to have encouraged unarmed Tutsi in his neighborhood to flee to his church and hospital complex in Mugonero.

On or about April 16, 1994, the indictment alleges that Ntakirutimana organized and led a well-armed convoy, including members of the national police force, local police, and militiamen to the compound where the Tutsi stayed. An attack on the Tutsi in the compound started immediately and continued for a full day and into the night, killing hundreds.²³ The indictment issued by the United Nations Tribunal for War Crimes in Rwanda charges him with genocide and crimes against humanity.

At some point after the attack and killing, the extraditee was admitted to the U.S. and was residing with his son in Laredo, Texas. On September 26, 1996, Ntakirutimana was arrested by U.S. marshals in Texas. The

¹¹ Another country which is already very active in the prosecution of such violations of human rights is Spain. In this country former military junta leaders of various South American countries are being prosecuted. See *Spanish Judge Orders Arrest of Former Argentine Leader*, 13 INT'L ENFORCEMENT L. REP. at 196 (1997).

¹² 1997 U.S. Dist. LEXIS 20714; for background see Associated Press, *State Dept.'s Extradition Bid Rejected*, WASH. POST, Dec. 31, 1997, at A17, col. 5.

²³ For additional background, see Barbara Crossette, *Judge in Texas Jars U.N. Effort on War Crimes*, N.Y. TIMES, Dec. 30, 1997, at A1, col. 1.